

### REMARKS

Responsive to the Office Action issued July 1, 2008, Applicant respectfully requests that the Office kindly amend the application as detailed above and consider the following responses.

#### Rejection Under 35 U.S.C. 102(e)

Claims 1-2, 6-7, 9-12 and 24-29 were rejected under 35 U.S.C. 102(e) as being anticipated by Langeveld (6,867,015).

Langeveld describes various means for adjusting sensitivity of a test organism including changing test conditions and adding certain substances to change sensitivity. Langeveld does not, however, suggest that the substance used to adjust test sensitivity can be derived from the species used as the test organisms or a different microbial species with sensitivity to the antibiotic to be detected.

In response, Applicant has amended independent claim 1 to reflect that the method is directed to adjusting sensitivity using a substance derived from the bacterial species used in the test or another susceptible organism.

The rejection with respect to claim 1, and the claims depending therefrom, is, therefore, respectfully traversed. Withdrawal of the rejection of claims 1-2, 6-7, 9-12 and 24-29 under 35 U.S.C. 102(e) and favorable reconsideration is respectfully requested based on the amendments and remarks above.

#### Rejection under 35 U.S.C. 103(a)

Claims 3-5, 8, 13-23, and 30-37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Langeveld.

Applicant respectfully submits that the claims dependent from claim 1 are allowable for at least the reasons that currently amended claim 1 is allowable. Again, Applicant has

amended independent claim 1 to reflect that the method is directed to adjusting sensitivity using a substance derived from the bacterial species used in the test or another susceptible organism. Applicant believes that this amendment addresses the Office's concerns.

Withdrawal of the rejections of claims 3-5, 8, 13-23, and 30-37 under 35 U.S.C. 103(a) and favorable consideration is respectfully requested based on the amendments and remarks above.

Rejection under 35 U.S.C. 112 (first paragraph)

Claims 1-13 and 23-37 were rejected under 35 U.S.C. 112, first paragraph, for the reason that the specification is enabling for only selected substances. Specifically, the Office Action explained "in claim 1, the terms 'a substance that reduces the culture growth inhibition of the antibiotic' lacks enablement." Applicant submits that the currently amended claim 1, and the claims depending from claim 1, as amended, addresses the Office's concern.

Applicant has amended independent claim 1 to specify that the substance used to adjust test sensitivity is derived from either the bacterial species used in the culture or another bacterial species with susceptibility to the antibiotic to be detected. The specification generally provides support for claim 1 as amended. For example, paragraph 0032 describes using beta-lactam receptors from various bacterial species.

Withdrawal of the 35 U.S.C. 112 (first paragraph) rejection and favorable consideration is respectfully requested based on the amendments and remarks above.

Rejection Under 35 U.S.C. 112 (second paragraph)

Claims 1-37 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action explained, "that there are many

instances of lack of antecedent basis in the claims.” Applicant thanks the Office for its recognition of the informality and has amended the claims to add antecedent basis as discussed above. Applicant respectfully believes that this amendment addresses the Office’s concerns and favorable reconsideration is respectfully requested.

Additionally, the Office has noted that claim 1 “reads on water” because claim 1 lacks selectivity of the substance that reduces the culture growth inhibition of the antibiotic. In response, Applicant has amended claim 1 to point out that:

*“... said substance being derived from either the first susceptible microbial species, a second susceptible microbial species, or combination thereof ...”*

Applicant submits that the currently amended claim does NOT read on water and reconsideration is respectfully requested.

#### Title

The Office has noted that the title of the disclosure is not descriptive and a new title is required. Applicant has amended the title of the disclosure as discussed above.

#### Abstract

The Office objected to the abstract because it is not directed to the elected disclosure. Applicant has amended the abstract as discussed above.

## CONCLUSION

Applicant believes that the above amendments and remarks are fully responsive to the Office Action, thereby placing this application in condition for allowance and such action is respectfully requested. Applicant respectfully notes that because Applicant has addressed certain comments of the Office does not mean that Applicant concedes other comments of the Office. Further, the fact that Applicant has made arguments for the patentability of some claims does not mean that there are not other good reasons for the patentability of those or other claims.

Applicant requests speedy reconsideration, and further requests that the Examiner contact its attorney if there are any remaining issues.

The present Amendment is being filed within five months of the mailing date of the Office Action, and a petition for extension of time of two months is enclosed herewith. Please charge any outstanding fees or credit any overpayments to Deposit Account No. 50-3152, Ref. No. 0656-032US3A.

Respectfully submitted,

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